



AZ POST

INTEGRITY BULLETIN

Volume No. 24



The Arizona Peace Officer Standards and Training Board (AZ POST) is mandated by the legislature to establish and enforce the physical, mental, and moral fitness standards for all peace officers in the state. The Board meets the charge to protect the public by overseeing the integrity of Arizona's law enforcement officers by reviewing cases and taking action against the certification of individuals who violate the AZ POST Rules. The following is a summary of some of the actions taken by the Arizona Peace Officer Standards and Training Board at its **July through November 2005**, public meetings. These actions are not precedent setting, in the sense that similar cases will end with the same result, because each case is considered on its individual facts and circumstances. Having said that, this Board publishes this bulletin to provide insight into the Board's position on various types of officer misconduct. As always, the Compliance Specialist for your agency is available to discuss any matter and to assist you with any questions you might have. The "*Editor Notes*" and the "Frequently Asked Questions" section are historical observations and insights for training and discussion purposes only.

July and September 2005

CASE NO. 1

SEX ON DUTY

Officer A engaged in sexual conduct with a fellow officer while on duty. There were several mitigating facts. No calls for service were delayed. The two stopped the behavior and agreed that one would leave the agency to remove temptation, both wishing to preserve their marriages. The conduct was self reported when the other officer applied for a position with another agency. Both officers answered all questions truthfully and honestly. The Board imposed a three month suspension commencing on the date of termination from the agency for malfeasance in office and conduct that tends to diminish public trust in the law enforcement profession.

CASE NO. 2

DISHONESTY

Officer B inadvertently failed to appear in court as subpoenaed, resulting in dismissal of the case. He was untruthful when he informed his supervisor that a new complaint had been signed in the presence of the Justice of the Peace. He did intend to see that a new complaint was filed; however, he had not done so when he told his supervisor that he had. The Judge later called the supervisor to complain and disputed the Officer's story. The Board suspended Officer B's certification for a year prospectively from the Board meeting date for malfeasance in office and conduct that tends to diminish public trust.

CASE NO. 3

DISHONESTY

Officer C piloted an unauthorized public relations flight in the agency helicopter. He instructed a fellow officer to lump the flight time in with another flight on the flight log to conceal the unauthorized flight. The practice of public relations flights was common; however, there had been a directive prior to this flight to curtail all non-essential flights. The Board suspended Officer C's certification for a period of six months from the date of termination by the agency for malfeasance in office and conduct that tends to diminish public trust in the profession.

CASE NO. 4**ALCOHOL ON DUTY**

Officer D consumed alcohol while on duty and driving his assigned agency vehicle. He actually kept beer in a cooler in the trunk of his assigned state vehicle. The Board revoked his peace officer certification for the unauthorized use and being under the influence of liquor on duty and malfeasance in office.

CASE NO. 5**DUI & DISHONESTY**

Officer E, while off duty, drove his personal vehicle while under the influence of alcohol. He caused an accident, fled the scene and later lied to police officers investigating the accident by denying that he was the vehicle operator. The Board revoked his certification for the commission of an offense involving dishonesty (false reporting to a law enforcement officer), and malfeasance in office.

CASE NO. 6**DISHONESTY**

Officer F was a flight paramedic on a helicopter crew that was under orders not to take any non-essential flights. The pilot took a brief public relations flight and when he returned he told Officer F to lump the .2 hours flight time in with an authorized flight in the flight log. Officer F was not on the flight and he had nothing to gain by the entry which he made in the flight log. The Board adopted a consent agreement finding malfeasance in office and suspended his certification for six months.

CASE NO. 7**DISHONESTY**

Officer G, in the presence of other officers, said the word, "nigger" aloud. A citizen heard the word and complained to the department. After the incident, Officer G discussed with other officers that they would all say he used the word "bigger" rather than the racial epithet he in fact used. The other officers were nonetheless truthful during the investigation. Officer G told investigators he had used the word "niggard" meaning stingy toward a friend and fellow officer. The Board adopted a consent agreement that found conduct that tends to diminish public trust in the law enforcement profession. The agreement called for suspension until lapse or for one year, whichever came first. The officer's certification will lapse before the year is up.

CASE NO. 8**MALFEASANCE**

Officer H and her husband were involved in an argument that turned physical when she pushed her husband and pulled the phone cord from the wall. The physical contact was minor and no injuries occurred. Assault charges were dismissed. The Board adopted a consent agreement finding malfeasance in office and suspending her peace officer certification for six months.

CASE NO. 9**DISHONESTY**

Deputy I made an arrest for three felony charges, but the jail's carbon copy of the booking slip only listed two. The hard copy that was submitted with his arrest report listed in small writing in ink a third charge for which the suspect had not been arraigned. When questioned by his supervisor, Deputy I said the writing must not have gone through to the carbon copy. He was directed to write a supplement and forward it to the county attorney's office. He did not comply. During an investigation, Deputy I admitted that he lied to his supervisor to conceal his mistake. He was a probationary employee and the department let him go. He failed to respond in any fashion to the POST Complaint alleging giving a false excuse to his supervisor. The Board suspended his certification for one year for malfeasance in office.

CASE NO. 10**DISHONESTY**

Cadet J was untruthful in his application for peace officer certification by seriously minimizing the reasons for his discharge from the Marine Corps. He claimed minor hazing when in fact there were seven counts of hazing, five counts of cruelty and maltreatment, and 15 counts of assault. Additionally, his background included arrests for leaving threatening telephone messages and battery of a spouse. The Board denied him certification for providing false information and the commission of numerous offenses involving physical violence.

CASE NO. 11**SEX ON DUTY**

Officer K responded to the request of a walking beat officer to give a highly intoxicated woman a safe ride to her hotel. He transported her to the hotel, walked her to the room and engaged in sexual intercourse with her. Approximately a month later, she contacted the department to report the incident. She does not deny she consented, however, she stated she was so drunk that she must have blacked out. One minute she remembers being fully dressed, seated on the bed next to the officer. The next thing she knew she was naked and engaging in sexual intercourse with the officer. She was adamant that this was not sexual assault, but she felt the officer took advantage of her and she wished it addressed. Officer K related the same story and indicated that she initiated the activity. He had previously resigned for unrelated personal reasons. The Board found malfeasance in office and revoked his peace officer certification.

CASE NO. 12**ASSAULT AND RESISTING ARREST**

Officer L, after being arrested for threatening and intimidating (his wife), physically resisted a peace officer's attempt to control him by grabbing the peace officer's fingers and thumb and bending them backwards. The officer entered a deferred prosecution program for battery of a spouse and battery of the officer. The Board revoked his certification for the commission of an offense involving physical violence.

CASE NO. 13**MALFEASANCE**

Officer M was in an emotionally distraught state due to marital discord and separation. He was on the cell phone with his wife and "lost it," firing three shots into the floor board of his patrol car. A fellow officer who was already en route to his location to meet him arrived and Officer M handed him his weapon and said, "Here take this, I can't have it right now." The department terminated his employment and the city put him to work as an unarmed code enforcement officer. He entered a diversion program and had the criminal damage charge dismissed. The officer has received counseling and is now divorced. The department was highly supportive of Officer M and testified about the desire to have him return to policing. The Board found malfeasance in office and suspended his certification for one year.

CASE NO. 14**MISFEASANCE**

Officer N arrested a young woman for disorderly conduct for exposing her breasts in public. She later complained that he made statements to her. "I liked what I saw. If I were off duty things would be different. You have a nice body." He also gave her a card and told her to call him when she was released from custody. When she received her property upon her release, Officer N had left her a post-it note with his personal telephone number on it. This is one incident from a pattern of on duty conduct aimed at establishing relationships with females. The Board found misfeasance in office and suspended his certification for six months with a provision that he attend sensitivity training of the state's choosing at his own expense before certification can be reinstated.

CASE NO. 15

DISHONESTY

Officer O was involved in a one-car accident. He had been drinking, but he initially told responding officers that he had not been drinking. The Board found that he, by this denial, committed an offense involving dishonesty and malfeasance. They suspended his peace officer certification for six months prospectively.

CASE NO. 16

TRAINING DEFICIENCIES

Officer P had not completed his continuing and proficiency training or firearms qualification for the previous year. A POST Compliance Specialist discovered the deficiencies during a routine audit of training files at his agency. The agency and the officer were notified of the deficiencies and given time to correct them. He failed to make up the training or qualification and the Board restricted his certification under Rule R13-4-109.01. That rule states that if an officer has failed to complete continuing or proficiency training the officer "shall not engage in enforcement duties, carry a firearm, wear or display a badge, wear a uniform, make arrests, perform patrol functions, or operate a marked patrol vehicle." The restriction will remain in effect until the board accepts proof that all training and qualifications have been brought current.

On July 13, 2005, and September 21, 2005, the Board voted to close out the following cases without initiating a Complaint for disciplinary action. This is neither a finding that no misconduct occurred nor a comment that the Board condones the conduct. In fact, the Board's rules are very broad and all misconduct violates one or more of the disciplinary rules. The Board may choose not to initiate a Complaint in a case even though there is misconduct if, considering all the circumstances, including agency discipline, the conduct does not rise to the level requiring a formal administrative proceeding. In many of these cases, the Board makes a statement that the conduct is an important consideration for a future hiring agency. By not taking disciplinary action, the Board leaves the determination of how serious the misconduct was to the discretion of an agency head who may choose to consider the officer for appointment. The Board relies on and enforces the statutory requirement of A.R.S. §41-1828.01 that agencies share information about misconduct with each other, even in cases where the Board has chosen not to take additional independent disciplinary action. Additionally, in some of these cases, further information is necessary before a charging decision can be properly made.

- Two cadets, one of each gender, violated academy rules by both being present in the male's room and having alcohol on campus.
- A commander conducted FOP business and engaged in political activity while on duty.
- An officer physically arrested a subject for trespassing on questionable probable cause when there was ample probable cause for disorderly conduct.
- An officer engaged in sexually harassing behavior with people at the school where he was a school resource officer.
- A cadet violated department policy by engaging in sexually suggestive behavior toward other cadets during off duty bar visits.
- An officer called in sick inappropriately, drank from a beer bottle while a passenger in a car, waited for a call to come in before investigating what sounded like shots fired, did nothing about suspicions that his soon-to-be-ex-roommates had smoked marijuana, and spent up to 45 minutes talking to a woman when he should have been patrolling.

The Board adopted consent agreements calling for voluntary relinquishments or denials of certification where the following allegations had been made, but not proven.

- An officer was involved in a single car accident on-duty with his patrol car while responding code 3. Physical evidence at the scene, an independent eye witness, and the patrol car's mounted video

camera and statements made by the officer to other officers, seriously contradicted his first accounts of the accident.

- An officer unlawfully recorded the telephone conversations of an ex-girlfriend. He pled guilty under a plea agreement to attempted interception of wire communications. Relinquishment of his peace officer certification was a condition of the plea agreement.
- An officer threatened a suspect with a knife by simulating a sawing motion near his left arm and neck while the subject's torso, arms, hands and legs were secured in a restraint chair.

October and November 2005

CASE NO. 1

POLYGAMY

Officer A and Chief B live in a community that straddles the Arizona-Utah border and were certified in both states. In March 2005, Utah POST revoked their certifications for practicing polygamy in violation of the Utah constitution and for committing bigamy under Utah law. Arizona POST requires that officers maintain the minimum qualifications for certification during their tenure. Not having certification revoked is one of the minimum qualifications. The facts included that both officers have three wives, one a legal, civil union and two celestial or FLDS church unions. Officer A had 15 children by all three wives and the Chief had 22 by his. AZPOST revoked peace officer certification for the Utah revocation, the Utah finding of the commission of a felony, for actually committing the felony of bigamy under the Utah code and for engaging in plural marriage or cohabitation contrary to the Arizona Constitution and the Oath of Office.

CASE NO. 2

INSUBORDINATE MALFEASANCE

Corporal C and three other officers responded to a loud party call to find numerous party-goers outside the apartment and consuming alcohol. As the officers began identifying the subjects, their supervising corporal arrived and spoke with a tenant of the apartment. As a result of the conversation, the supervisor arrested the tenant for disturbing the peace, placed him in handcuffs and escorted him to a police vehicle. He told the other officers to cite everyone who was underage for minor consuming and left the location. Corporal C disagreed with this approach and gathered up the citations that had been written and told the people not to worry about them. He wrote a report stating the apartment tenants cooperated with the police and sent the guests home, with no further enforcement action taken. He failed to mention the aborted enforcement action. For two months Corporal C carried the citations around in his briefcase. They were found by a sergeant and returned to him. At that time he requested assistance from his lieutenant in dismissing the citations. An investigation determined the supervisor's actions were proper and Corporal C's "unarrest" was unlawful and his choice to void citations was contrary to policy. He made no attempt to defend himself or respond to the POST Complaint. The board suspended his certification for one year prospectively for misfeasance in office and committing conduct that tends to jeopardize public trust in the profession.

CASE NO. 3

COMPUTER MISUSE

Officer D was discovered spending time in dating chat rooms while on duty. His lieutenant ordered him to close his office at a local elementary school and told not to go to the school with the exception of requested canine demonstrations. About a month later he went to the school and used a city computer to access singles chat rooms. The following day his lieutenant asked him why he had gone to the school. He said he was there conducting canine obedience training. The lieutenant asked for a memorandum. Officer D wrote a memo stating he stopped at the school to conduct canine training and to check his email. He neglected to mention the time spent in chat rooms. Prior to an interview by internal affairs, Officer D disclosed all the facts in a detailed four page letter to the lieutenant. The agency terminated his employment. The POST Board found malfeasance in office and suspended his certification for a period of one year prospectively from the date of the Board meeting.

CASE NO. 4**MIS- OR MALFEASANCE**

Deputy E lived and worked in a small town where pretty much everybody knew everyone else. Mr. X believed that Mr. Y owed him money and he determined to hold Y's utility trailer as collateral. Deputy E told X he could leave the trailer on Deputy E's property. About six months later, Mr. X noticed the trailer was missing and reported it stolen. Deputy E was truthful and forthright about his involvement in the civil dispute when contacted by the investigating officer. He made a statement that he was afraid he was in trouble because he was essentially in possession of stolen property. The Board found that although Deputy E should have known that Y's taking of the trailer was illegal or improper, he did not have the state of mind necessary to establish possession of stolen property. The Board found misfeasance or malfeasance in office and suspended his certification for one year beginning on the date of his termination from the agency.

CASE NO. 5**FALSE INFORMATION**

Cadet F was stopped by police for operating his privately owned vehicle with front mounted blue neon lights in violation of A.R.S. §28-931(A). Cadet F was wearing a Phoenix Police "Raid" shirt and black BDU pants. He had his agency (not PPD) issued handgun concealed under the driver's seat. He told the police that the academy required him to keep his firearm with him at all times in order to try and justify the concealment. This statement was false. The academy dismissed him and his agency terminated his employment. The Board found that he committed false information to a peace officer and malfeasance in office and denied him certification.

CASE NO. 6**COMPUTER MISUSE**

Officer G used agency computers to access and download pornography from the internet. When asked about it, he admitted the conduct, acknowledged that he knew it was prohibited by agency policy. The Board adopted a consent agreement calling for a six month suspension from the date he left the agency's employ for malfeasance in office.

CASE NO. 7**SEX ON DUTY**

Officer H admittedly engaged in consensual sexual conduct while on duty with two different women nearly two years apart. The Board adopted a consent agreement for a one year suspension from the date he left the agency for malfeasance in office.

CASE NO. 8**SEX ON DUTY**

Sergeant I engaged in consensual sexual conduct with two different women nearly two years apart. Sergeant I did not respond to the Complaint or attempt to cooperate with the POST staff. The Board found malfeasance and that he gave equivocal responses during the investigation. It imposed a one year suspension of peace officer certification prospectively from the date of the Board meeting.

CASE NO. 9**THEFT & LYING TO INTERNAL AFFAIRS**

Officer J bought a puppy from a little old lady with a personal check for \$300.00. He assured the woman that she could trust him and accept his check because he was a police officer. He then stopped payment on the check and thereafter refused to pay her the money he owed her. He also lied to internal affairs investigators about developing sexual relationships with women he met on duty. The Board revoked his certification for theft and malfeasance in office.

On October 19, 2005, and November 16, 2005, the Board voted to close out the following cases without initiating a Complaint for disciplinary action. This is neither a finding that no misconduct occurred nor a comment that the Board condones the conduct. In fact, the Board's rules are very broad and all misconduct violates one or more of the disciplinary rules. The Board may choose not to initiate a Complaint in a case even though there is misconduct if, considering all the circumstances, including agency discipline, the conduct does not rise to the level requiring a formal administrative proceeding. In many of these cases, the Board makes a statement that the conduct is an important consideration for a future hiring agency. By not taking disciplinary action, the Board leaves the determination of how serious the misconduct was to the discretion of an agency head who may choose to consider the officer for appointment. The Board relies on and enforces the statutory requirement of A.R.S. §41-1828.01 that agencies share information about misconduct with each other, even in cases where the Board has chosen not to take additional independent disciplinary action. Additionally, in some of these cases, further information is necessary before a charging decision can be properly made.

- A lieutenant threatened to reveal personal information about a former domestic partner to her parents as part of negotiations over a civil dispute.
- An officer reported exaggerated flight hours in a log and used night vision equipment without authorization.
- An officer commented to a motorist who had "flipped her the bird," that if he raised his hands at a cop again, she'd break both his arms.
- A deputy was involved in a minor physical confrontation with his wife, but the facts were unclear and she will not cooperate.
- An officer made unauthorized entry into two different homes on one night and improperly applied flex-cuffs to two arrested subjects, causing wrist injuries.
- A sergeant was DUI in her personal vehicle off duty.
- An officer attempted suicide.
- Four cadets were caught looking at each other's test papers during academy testing.
- An officer made a highly disproportionate number of DUI arrests of young white females, but there was no evidence of inappropriate intent or unprofessional conduct with any of the arrests.
- An officer was instructed to complete numerous delinquent police reports and he failed to do so in a timely manner.
- An officer violated policy when he uncuffed a prisoner to allow her to smoke a cigarette and failed to document that she showed her tattoo to him by lifting her skirt under which she wore no undergarments.

The Board adopted consent agreements calling for voluntary relinquishments or denials of certification where the following allegations had been made, but not proven.

- An officer repeatedly reported for duty with alcohol on his breath and in his system.